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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949.

No. 534

IN THE MATTER OF V-I-D, INC.,
Debtor.

MARGUERITE S. GLOVER,
Petitioner,

vs.

McM. COFFING, TRUSTEE,
V-I-D, INC., DEBTOR,
LAWRENCE H. PRYBYLSKI,
INDENTURE TRUSTEE,
CHARLES J. KRAMER, INTERVENOR,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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Midwest Law Printing Co., DElaware 7-6669

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STATEMENT OF THE MATTTER INVOLVED.

The District Court rendered no opinion. The Court of Appeals' opinion is published as:

In re: V-I-D, Inc; Glover v. *Coffing,* (7 Cir.), 177 F. 2d 234.

The question presented by this petition is not primarily one of bankruptcy, as the caption might indicate. It goes to the roots of the federal judiciary,—a federal court's duty to entertain an attack upon its jurisdiction of the subject matter.

This petitioner filed a petition in the District Court for the Northern District of Indiana, challenging that court's jurisdiction of the *subject matter* of this purported corporate reorganization proceeding (Tr. 47-58). The District Court struck her jurisdictional petition from the record, and *refused to consider* the question of whether it lacks jurisdiction of the subject matter (Tr. 63). The court took this action upon the motion of the corporate debtor (Tr. 59-62),—the same party which her sworn petition accused of having procured the apparent jurisdiction by *fraud upon the court.*

She appealed to the Court of Appeals, which not only affirmed (Tr. 107) but *in its opinion branded her as "contumacious" for "asking" it to review and look into this jurisdictional question* (Tr. 106).

While castigating her, the accuser, for raising the question, the action of both the Court of Appeals and the District Court *operates to throw the mantle of judicial secrecy* and protection around the accused, the purported corporation, which she charged with fraudulent procurement of the jurisdiction (Tr. 106).

So she comes to this Court for the following relief:

(1) To require the Court of Appeals and the District Court to perform their basic judicial duties of determining whether they are acting outside their jurisdiction of the subject matter.

(2) To ask this Court to remove the "contumacious" stigma with which the Court of Appeals unjustly branded her because she raised the jurisdictional question.

Her petition in the District Court charged that the corporate debtor had fraudulently procured the District Court to assume an apparent, but actually non-existing, jurisdiction over the subject matter. She charged that

the corporation did this by making false statements of the basic jurisdictional facts in its voluntary petition for corporate reorganization, so as to give apparent jurisdiction over the subject matter, but that these jurisdictional facts were actually non-existent (Tr. 48-51, 57). This will be elaborated presently.

Her reason for challenging the District Court's jurisdiction over the subject matter was this: Before this reorganization proceeding was begun, she and the purported corporation held conflicting titles to a certain piece of Indiana real estate. Upon commencement of the reorganization proceeding, the District Court took possession of this real estate as being the property of the corporation. This made it necessary for her to file a reclamation petition in the reorganization proceeding asking the court to surrender her property (Tr. 12). At the time of filing that petition she was ignorant of the facts giving rise to the court's lack of jurisdiction of the subject matter (Tr. 52, top). As soon as she learned of those facts, *she warned the District Court of its probable lack of jurisdiction over the subject matter at an early stage* of the proceeding by filing her "motion for the court to investigate its jurisdiction" (Tr. 25-28). But the court struck out her motion and refused to consider the jurisdictional question (Tr. 33). The court took that action at the request of the accused corporation (Tr. 30). The court then went ahead and made a purported decree on the merits of the conflicting real estate titles, in favor of the corporation (Tr. 43-44). This was affirmed in an appeal which dealt solely with the real estate title question, and in which the jurisdictional question was not considered in the opinion (Tr. 56). (*In re V-I-D; Glover* v. *Coffing*, 158 F. 2d, 964).

Thereupon, having been unable to extricate her real estate from the court's possession up to that time be-

cause the court had first refused to consider her original challenge to its jurisdiction (Tr. 25, 33) and had then gone ahead and made a purported decree against her title on the merits (Tr. 43), she renewed her challenge to the District Court's jurisdiction over the subject matter by filing her petition which is now under review, alleging that the court lacks basic jurisdiction of the subject matter (Tr. 47), that therefore its previous purported decree against her title and right to possession is void (Tr. 56-57), and that the court remains under a continuing duty to surrender her real estate which it holds without jurisdiction of the subject matter (Tr. 57-58).

The problem boiled down to this: If the District Court *actually lacks* jurisdiction over the subject matter, then it has done, and is doing, a serious wrong to petitioner by illegally holding possession of her real estate and by rendering a void decree against her title. On the other hand, if the District Court *actually has* jurisdiction over the subject matter, then the real estate is lawfully in the possession of the District Court and her title has previously been divested by a valid decree of that court. Her present petition to the District Court is not as an "intervenor" in the ordinary sense. She says there is no valid reorganization proceeding in which anybody *can* intervene. Her position in the District Court, as well as here, is that of a property owner *aggrieved by an illegal exercise of jurisdiction by the federal judiciary.* She only asked the courts below to perform one basic duty of every federal court: to determine whether the District Court actually *has* jurisdiction of the *subject matter.*

The grievance which petitioner brings here is that the District Court and Court of Appeals both *refused to entertain* the above jurisdictional question presented by her

petition below (Tr. 63, 107). *They threw the mantle of judicial secrecy* around the purported corporation which her petition accuses of fraudulent procurement of an apparent but non-existent jurisdiction over the subject matter in the District Court.

While condoning the accused wrongdoer and shielding it from investigation and exposure, *the Court of Appeals' opinion castigates her,* the accuser, as being "contumacious" for raising the inquiry (Tr. 106).

She comes here, not for a present review of the *merits* of any phase of the case, but to require the lower courts to give her a *hearing* on this question of jurisdiction of the subject matter, and to give it to her *without castigating her for asking for it* (Tr. 106) in a published opinion which has unjustly held her up to public contempt unless this Court removes the unjust stigma. (*In re V-I-D, Inc.; Glover* v. *Coffing,* 7 Cir., 177 F. 2d 234, 236 bottom.)

Basis of This Court's Jurisdiction.

This Court's jurisdiction is invoked under 28 U. S. Code 1254, allowing petitions for certiorari generally to courts of appeals, and 28 U. S. Code 2101 (c) allowing such petitions to be filed within ninety days after judgment below. Judgment was entered by the Court of Appeals October 13, 1948 (Tr. 107), and this petition is filed within ninety days thereafter.

Questions Presented.

(1) Can a federal court avoid the duty of investigating and determining its jurisdiction of the subject matter by closing its eyes and ears and "striking from the record" (Tr. 62, 63) a sworn charge that the jurisdic-

tional facts are non-existent? (Tr. 47-58). This procedure is expressly sanctioned by the opinion of the Court of Appeals (Tr. 102-106).

(2) Will this Court permit lower federal courts to *castigate* and *stigmatize* parties for filing courteous petitions challenging their jurisdiction, as the Court of Appeals' opinion does to this petitioner? (Tr. 106).

Must citizens and property owners of the United States approach their federal courts in fear and trembling when they seek to question their jurisdiction,—lest the courts become incensed at their request and publicly brand them as "contumacious" in their opinions which go into the published federal reports?

Note: The only relief now sought by petitioner here is to require the lower courts to *entertain* the jurisdictional question. The case is not yet at a stage where anything on the final *merits* of the jurisdictional question can now be presented to this Court. Accordingly, this Court, if it sees fit, has the power to remand the case summarily on this petition for certiorari, with instructions to the Court of Appeals to reverse and for the District Court to reinstate and hear the merits of the jurisdictional petition. That would render it unnecessary to order the case up here for final briefs and argument at this stage. That procedure was recently used by this Court in requiring this same Court of Appeals to entertain and pass upon the merits of a question. The remand order in that case was made summarily, upon the petition for certiorari, *without the necessity of ordering the case up here for final briefs and oral argument*:

Mitchell, et al. v. *White Consolidated, Inc.*, 336 U. S. 958, 69 S. Ct. 889.

Reasons Relied on for Allowance of Writ.

Summary.

I.

This refusal to *entertain* and consider the merits of petitioner's attack on the District Court's jurisdiction of the *subject matter* was no mere error,—it was a *refusal to perform a basic judicial duty.*

This refusal was aggravated by the unusual circumstance that the court "struck out" the petition making the jurisdictional attack, (Tr. 63), *on the motion of the allegedly guilty party,* the corporate debtor, (Tr. 59) *thereby throwing the mantle of judicial secrecy* around the party charged with procuring a fraudulent jurisdiction, by the court's refusal to open its eyes to the fraud.

This violates the basic doctrine applied by this Court in all cases, including bankruptcy cases (first case cited, *infra*), that a federal court *must* consider its lack of jurisdiction of the subject matter at *any* stage, no matter how late, no matter *who* raises it, or on the court's *own* motion after the court learns about it.

> *Vallely* v. *Northern Fire & Marine Ins. Co.* (1920), 254 U. S. 348, 352-354 (see certified questions at pp. 352-353), 41 S. Ct. 116, 117, 65 L. Ed. 297.
>
> *Mitchell* v. *Maurer* (1934), 293 U. S. 237, 244, 55 S. Ct. 162, 165.

It violates the principle announced by this Court, by other courts of appeal, and by the Seventh Court of Appeals itself, that lack of jurisdiction of the subject matter can never be cured by consent or estoppel of the parties, and that *it can be raised on a second appeal* of the

same case though not raised on the first appeal (see first case cited, *infra*).

City of Stuart v. *Green* (5 Cir. 1937), 91 F. 2d 603, 604, certiorari denied 302 U. S. 744.

Vallely v. *Northern Fire & Marine Ins. Co.* (1920), 254 U. S. 348, 352-354 (see certified questions at pp. 352-353), 41 S. Ct. 116, 117, 65 L. Ed. 297.

In re: *Peer Manor Bldg. Corporation* (7 Cir. 1943), 134 F. 2d 839, 840-841.

II.

A further and unusual ground for allowing this writ (which no petitioner should ever be obliged to bring to this Court) is that the Court of Appeals saw fit at the close of its opinion to *stigmatize* this petitioner as being "contumacious" for having the temerity to raise the question of jurisdiction of the subject matter (Tr. 106), though all she had done was to file a very courteous petition raising the question in the District Court (Tr. 47-58), as she clearly had a right to do:

Chicago etc. R. Co. v. *Willard,* 220 U. S. 416, 419, 55 L. Ed. 521, 523-524.

Discussion.

At the present stage, it appears unnecessary, and probably impossible, for this Court to review the *merits* of the jurisdictional question which this petitioner raised below, because the merits of the question have not yet been considered below. The purpose of the present petition for certiorari is simply to obtain a *hearing* of the merits of the jurisdictional question below.

This Court will be able to see at a glance that this petitioner's "petition to surrender real estate" (Tr. 47-58),

which raised the jurisdictional question and which the District Court "struck from the record" (Tr. 62-63), *presented mixed questions of fact and law,* which the District Court should pass upon before a review is possible here, namely:

(1) Her allegations that the *jurisdictional facts* alleged in the corporate debtor's voluntary petition to be reorganized, and which the Chandler Act requires to be alleged as a basis for jurisdiction (11 U.S.C.A. 530), were *in fact non-existent.* Though her petition avoided the use of the epithet "fraud", out of courtesy to the attorneys on the other side, it is plain that if her fact charges are true, then the corporate debtor's conduct in inducing the court to assume an apparent but non-existent jurisdiction of the subject matter did in law amount to a serious fraud on the District Court. (*French* v. *Jeffries,* 7 Cir., 149 F. 2d 555, 557). She charged that the purported corporate debtor never completed its original corporate organization, never functioned as a corporation, never transacted any business of any kind, never had any place of business or office, never acquired any debts (Tr. 48-50).

(2) She also tendered an issue as to what the Indiana law is, by alleging that under the above-stated facts this corporation was not fully in existence or entitled to transact business, or to have debts, under Indiana law (Tr. 48, par. 6), as shown by the following authorities, and therefore there was no corporation (subject matter) to support the purported reorganization proceeding:

Sec. 25-219, Burns Ind. Sts. 1933 (Acts 1929, Ch. 215, Sec. 20, p. 725).

Sterne v. *Fletcher American Co.* (1932), 204 Ind. 35, 48, 49, 181 N. E. 37, 42, pars. 1, 2 and 4.

The Indianapolis etc. Co. v. *Herkimer,* 46 Ind. 142, 146, 148.

(3) Regardless of the corporation's status under Indiana law, she tendered a further issue of *federal law* (Tr. 49, par. 7) as to whether a corporation in this factual situation comes within the subject matter of a corporate reorganization under the Chandler Act, which is the sole basis of the District Court's jurisdiction of the subject matter in this case. It is unnecessary for this Court to pass on that question now, beyond recognizing that the question exists and was presented below (Tr. 50-51).

Without going into the merits of these questions of Indiana and federal law before they have been entertained and passed on below, it can be observed at a glance that the Chandler Act requires that these jurisdictional facts "shall" be alleged under oath in "every" petition for corporate reorganization (11 U.S.C.A. 530). Again, as showing the bearing of state law, on these jurisdictional questions: This Court has held that a district court has no jurisdiction to reorganize a corporation after its right to do business has ceased under the law of the state creating it, though it continues in existence for certain limited purposes, and the same doctrine would apply to a half-born corporation, existing for some purposes but not yet authorized to do business under the laws of the state. *Chicago Title & Trust Co.* v. *Forty-one etc. Corp.* (1937), 302 U. S. 120, 123, 127-129; 82 L. Ed. 147, 58 S. Ct. 125, 128, 129. Further, the Seventh Court of Appeals, in the case of *In re Peer Manor Corporation* (1943), 134 F. 2d 839, which it ignored in the opinion in the present case, held that when a corporation was in such a situation the district court lacked jurisdiction of the subject matter to reorganize it. In that case the jurisdictional attack was successfully made and entertained at a later stage of the reorganization proceed-

ing than in the case at bar. The district court had entered a "final decree" approving the reorganization plan (p. 839), yet when the jurisdictional question was later brought to the court's attention, the Court of Appeals held that the proper corporate existence was an "important jurisdictional fact", that "it was error for the court to refuse his offer of proof in this regard" and that "we therefore hold * * * the court was without jurisdiction of a party to be reorganized and *without jurisdiction of a subject for reorganization*" (p. 841, top of first column).

However, it will be unnecessary for this Court to review the above questions of fact and law until the lower courts first discharge their duty to entertain and decide them.

The record here plainly shows that the courts below *have not considered the merits of any of the above questions of fact and law*. The debtor corporation's successful motion to "strike from the record" her petition, did not deny the fact allegations, nor deny the Indiana law or federal law as alleged in her petition, but contended merely that she was *not entitled to be heard* on these questions (Tr. 60-62) and contended that: "Petitioner *cannot question* this court's jurisdiction over the *subject matter*" (Tr. 62, par. (b)).

The court's Trustee joined in the accused corporate debtor's motion to strike and suppress inquiry into the charge that the jurisdiction (and therefore the Trustee's job) was founded on fraud (Tr. 60, top). The court made an order that "the motion of the trustee to strike the petition of Marguerite S. Glover is granted" (Tr. 63). This was the same relief sought by the accused corporate debtor in the same motion (Tr. 62). The record is not improved, but is made worse, by the col-

laboration of the court's officer in joining the accused debtor in seeking, and obtaining, an order suppressing inquiry into the charge that the court's jurisdiction was founded on fraud and was non-existent.

The Court of Appeals' opinion (Tr. 102-106) totally ignores the great number of decisions of the Supreme Cuurt regarding its duty to entertain questions going to jurisdiction of the subject matter, including the following which were cited to it:

> "Unlike an objection to venue, lack of federal jurisdiction *cannot be waived* or be overcome by an agreement of the parties. An appellate federal court *must satisfy itself,* not only of its own jurisdiction, but also of that of the *lower court's* in a cause under review. *Mansfield, etc. R. Co.* v. *Swan,* 111 U. S. 379, 382, 4 S. Ct. 510, 28 L. Ed. 462. Hence, the *failure* of the Insurance Commissioner to claim, in his petition for certiorari, that the order of the District Court was void for lack of federal jurisdiction of the suit, and his *failure* otherwise to call to the attention of this Court the lack of diversity of citizenship are *immaterial.*" (Our italics.)
>
> *Mitchell* v. *Maurer* (1934), 293 U. S. 237, 244, 55 S. Ct. 162, 165.

The above rule was applied in the following bankruptcy case where all parties acquiesced and collaborated in having an *adjudication* of bankruptcy entered against a corporation which was outside the purview of the Bankruptcy Act (being an insurance company). This Court said:

> "Courts are constituted by authority and they cannot go beyond the power delegated to them. If any act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as *nullities.* They are not voidable, but sim-

ply *void,* and this even prior to reversal." (Our italics.)

Vallely v. *Northern Fire & Marine Ins. Co.* (1920), 254 U. S. 348, 352-354 (see certified questions at pp. 352-353), 41 S. Ct. 116, 117, 65 L. Ed. 297.

The doctrine of the last quoted case is directly applicable to this corporate reorganization, because (among other reasons) the Chandler Act itself provides that the original order approving the corporate debtor's petition for reorganization is the *equivalent* of an *adjudication* in bankruptcy:

"Upon the approval of the (reorganization) petition, the *jurisdiction,* powers and duties of the *court* and of its officers, where not inconsistent with the provisions of this chapter, shall be the *same* as in a bankruptcy proceeding upon an *adjudication.*" (Our emphasis.)

11 U. S. C. A. 514.

Accordingly, since an *adjudication* in bankruptcy does not prevent subsequent inquiry into lack of jurisdiction of the subject matter (*Vallely* v. *Northern etc. Ins. Co.,* 254 U.S. 348, 352-354, *supra*), no greater immunity against inquiry is (or could be) conferred by an order approving the debtor's petition for reorganization.

Fallacies and Castigations in the Opinion.

In order to justify the anomalous practice of "striking from the record" her petition challenging the jurisdiction of the subject matter, the Court of Appeal's opinion (Tr. 102-106) states the following propositions which, we respectfully submit, *are fallacious and unjust on their face:*

(1)

"Because of these facts disclosed by the records in this court, it seems plain that the appellant, Marguerite S. Glover, is *precluded* from again bringing into question the *ownership* of the real estate involved." (Our italics) (Tr. 105).

But her jurisdictional petition does not raise any question of "ownership." Instead, it says that neither the District Court or Court of Appeals have any jurisdiction of the *subject matter* of this *reorganization proceeding*, and therefore they do not have and never did have any jurisdiction to decide anything regarding ownership of her real estate (Tr. 47, 57). The petition prays nothing except for the court to *surrender* her real estate for *lack of jurisdiction* to withhold it from her (Tr. 58).

By the above fallacy of *shifting the question* from *jurisdiction* to *ownership*, the opinion fails to decide the only question in the appeal.

(2)

"• • • She entered these proceedings as an intervenor—because she claimed to be the *owner* of the real estate then in the *possession of the trustee* for the corporate debtor. She was neither a *creditor* of nor a *stockholder* in V-I-D, Inc. Certainly she was not an *indenture trustee*, hence she had *no right to controvert* the allegations of the *petition* by V-I-D, Inc. seeking relief under chapter 10 of the Bankruptcy Act.

"Sec. 549 Title 11, U.S.C.A. provides:

'An order which has become final, *approving a petition* filed under this shapter, shall be a conclusive determination of the jurisdiction of this court.'

"Consequently *when* Marguerite S. Glover entered these proceedings as an intervenor *more than three months after the order* approving the petition for reorganization had been entered, the jurisdiction of the District Court had been *conclusively established.*" (Our italics) (Tr. 105).

We respectfully submit that the above reasoning is untenable because:

(a) While admitting that she could not be heard and *was not heard* on the order approving the debtor's petition for reorganization, yet the opinion concludes that she is "conclusively" bound by the order, so that she must let the court hold possession of, and adjudge the title to, her real estate, though the court in fact is doing so under a non-existent jurisdiction of the subject matter and the very order on which the jurisdiction rests was procured by fraud upon the court.

(b) It ignores the fact that Congress could not, and did not intend to, disable the federal courts from throwing off a jurisdiction fraudulently imposed on them. It ignores the fact that a companion section of the same act shows that the order approving the petition for reorganization is intended only to bind those who are given notice of it and are parties to it, namely, "the debtor, creditors, indenture trustees, and stockholders." (11 U. S. C. A. 545). It also ignores another section of the same statute, above quoted, to the effect that the order approving the petition is equivalent to an order of "adjudication" of bankruptcy so far as concerns "the jurisdiction, powers and duties of the court." (11 U. S. C. A. 514). It also ignores the above quoted Supreme Court decision, *Vallely* v. *Northern Fire & Marine Ins. Co.* (1920) 254 U.S. 348, 352-354, that an "adjudication" in

bankruptcy where jurisdiction of the subject matter is lacking is a "nullity" and "void." It ignores the Seventh Court of Appeal's own decision, above cited, *In re: Peer Manor Bldg. Corporation* (1943) 134 F. 2d 839, 840, 841, where that court held that such a jurisdictional question must be entertained in a similar corporate reorganization proceeding, though it was raised after the final judgment approving the plan of reorganization, and was raised by a creditor who should be disabled from challenging the jurisdiction even more than an outsider like Mrs. Glover, if the present opinion be correct.

(3)

> "Moreover, intervention *presupposes* the pendency of a suit in a court of *competent jurisdiction,* and an intervenor impliedly, if not expressly *accepts* the proceedings as he finds them at the time of intervention. Paraphrasing what was said in *Whittaker, et al.* v. *Brictson Mfg. Co.,* 43 F. 2d 485-491.
>
> "The petitioner herein *did not* in her latest petition in the case come in as an *intervenor* in subordination to the main proceedings but rather in *defiance* thereto 'To seek to set aside the entire proceedings in a case, and to *have the same held for naught* on the ground that they are absolutely *void* cannot be in recognition of the propriety of the main suit.'
>
> "Under the facts and circumstances herein the petitioner-appellant is *contumacious* in *asking* this court to again review and reverse findings made adversely to her contention. 'Public policy requires that there be an *end* to litigation.'" (Our italics) (Tr. 106).

With all due respect to the Court of Appeals, this petitioner submits to this Court that it would be hard to find in the books a more unsound chain of reasoning or one *leading to such an unjust result.*

This petitioner is *not* an "intervenor" in the ordinary sense of one who comes in *seeking* relief on the *merits* from a court of competent jurisdiction, and the opinion so admits. The only case cited in the entire opinion is the one contained in the above excerpt. It is on the subject of non-jurisdictional intervention, and hence it has no bearing on the case at bar.

After admitting that this petitioner is not that *kind* of an intervenor, the opinion says she comes "in defiance" and "to seek to set aside the entire proceedings * * * on the ground that they are absolutely void."

For this, the opinion then *castigates* her as being "contumacious", for "asking" the court to "review" the question "again." If she *were* asking the Court of Appeals to review the jurisdictional question again there would be nothing "contumacious" in such a request courteously made, particularly in view of the rule that jurisdiction of the subject matter is always an open question which anybody has a right to raise at any stage, and which the court itself has the *continuing duty* to raise and consider on its own motion. But actually this jurisdictional question had not been before the Court of Appeals before. The record shows that when she first discovered the probable lack of jurisdiction she fully discharged any moral duty she may have had by calling it to the attention of the District Court in her "motion for court to investigate its jurisdiction" (Tr. 25-28). This was met by the debtor corporation's "motion to strike" it out (Tr. 30-32), which the court sustained on untenable grounds which were not in point (Tr. 32-33). Her appeal from that order was dismissed on the Trustee's motion on the ground that it was "not an applicable final order" (Tr. 53, par. 14). After thus giving

warning and having the District Court close its eyes and rebuff it, she was compelled to go ahead and litigate her title in that court because the court was holding *possession* of her real estate and the Trustee filed a *counterclaim* to take her title away from her (Tr. 40-42). This resulted in a decree in favor of the Trustee *dealing solely with the title question* (Tr. 43-44) and her former appeal therefrom was devoted solely to the title question (Tr. 56).

Since jurisdiction of the subject matter is a question which transcends the rights of the parties in a particular case and goes to the roots of the administration of justice, the rule is well established that a party can go so far as to remain *silent* and *invoke* the jurisdiction of the subject matter and then challenge it for the first time in the Supreme Court (though Mrs. Glover did nothing of the kind, but has sought only to *extricate* her real estate from the District Court ever since discovering its probable lack of jurisdiction):

> "Had the circuit court jurisdiction of this case? As the *plaintiff withdrew* and did not *renew* his motion to remand to the state court, but *went to trial* in the Federal court *without objection*, was the circuit court of appeals, or is this court, *precluded* from considering the question of jurisdiction? These questions can have but one answer. It is firmly established by many decisions that in *every* case pending in an appellate Federal court of the United States, the inquiry must *always* be whether, under the Constitution and laws of the United States, that court or the court of original jurisdiction could take cognizance of the case. The leading authority on the subject is Mansfield, *C. & L. M. R. Co.* v. *Swan*, 111 U.S. 379, 382, 28 L. Ed. 462, 463, 4 Sup. Ct. Rep. 510, where the cases are fully reviewed. In that case the question of jurisdiction was raised *in this* court

by the party *at whose instance* the subordinate Federal court *exercised jurisdiction.* But that fact was held not to be decisive; for, said Mr. Justice Matthews, speaking for the court, 'On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for *itself,* even when not otherwise suggested, and without respect to the relation of the parties to it.' This rule was said to be *inflexible* and *without exception,* and has been uniformly sustained by this court." (Our emphasis.)

Chicago, etc., R. Co. v. *Willard,* 220 U.S. 416, 419, 55 L. Ed. 521, 523-524.

The above doctrine also applies to permit raising jurisdiction of the subject matter on a *second appeal,* though not raised in the first appeal of the same case:

"Diversity of citizenship is relied on as the sole ground of federal jurisdiction. It is the *second appearance* of the case in this court. *Green* v. *City of Stuart,* 81 F. (2d) 968.

"No question of jurisdiction was *raised* or *decided* on the former appeal, but, upon *remand* of the case to the district court, its *jurisdiction was challenged* by the city upon the ground that Green was not the original payee but held the notes as assignee of the Osceola Golf Club, a corporation organized under the laws of Florida, which could not have prosecuted the suit in the federal court if no assignment had been made.

"It is contended that the question of *jurisdiction* was foreclosed by the decision of this court on the *former appeal,* but, as the question was *not raised* by any of the parties or decided by the court, we know of *no principle in the doctrine of estoppel* or the doctrine of the *law of the case* which *relieves* us of the *duty* of considering and determining whether the cause was properly brought in the federal court. The objection is one which *cannot be waived,* and may

be raised by the parties *at any time* or considered by the court on its own motion. *Utah-Nevada Co.* v. *De Lamar* (C.C.A.) 133 F. 113.

"Coming to the jurisdictional plea on the merits, *we find it to be well taken.* * * *" (Our italics).

City of Stuart v. *Green* (5 Cir. 1937), 91 F. 2d 603, 604, certiorari denied 302 U. S. 744, rehearing denied, 302 U. S. 779.

The opinion below closes by quoting from some undisclosed source that: "Public policy requires that there be an end to litigation" (Tr. 106). So the court attains that end by castigating Mrs. Glover for her "defiance" in raising the jurisdictional question, but it has no word of criticism for the corporate debtor who fraudulently procured the jurisdiction which started the litigation in the first place.

This miscarriage of justice involves more than this petitioner's property rights, and more than the unjust castigation of her. It goes to the roots of administration of justice in the federal court.

Shall the federal courts close their eyes, and suppress inquiry into, and condone, fraudulently acquired jurisdictions and void orders by the device of "striking out" the charges?

Shall a citizen be castigated as "contumacious" in a published opinion by the Court of Appeals because of her "defiance" in raising the jurisdictional question and asking the court to release her real estate which it holds under a void and fraudulently acquired jurisdiction?

Wherefore, petitioner prays this Court to issue its Writ of Certiorari and to review and reverse said judgment of the Court of Appeals, either by summary order or by bringing up the case, as the Court decrees best.

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